



Hilmer, the National Competition Policy; A Layperson's Introduction

1. What is meant by National Competition Policy (NCP)?

Competition policy is concerned with all facets of government policy which influences the competitive behaviour and competitive environment of firms, individuals and government agencies engaged in the supply of traded goods and services in the Australian economy. Australia's National Competition Policy (NCP) is a major element of the Government's current economic strategy and is a joint Federal/State/Territory Government initiative. It establishes for the first time, a consistent national economic regulatory framework directed at maintaining and promoting competition in all forms of business activity. It works on the general presumption that the public interest is best served by promoting competition in the business sector unless it can be formally demonstrated that this is not the case in particular instances.

The NCP is formally supported by a body of Federal and State/Territory legislation and by three inter-governmental agreements which have been entered into by the Commonwealth and the State/Territory Governments. The need for a co-operative inter-governmental approach to competition policy reflects the divisions of Constitutional authority applying in Australia whereby responsibilities for regulating business activities (including the business activities of Government Business Enterprises or GBEs) is shared between the Federal and State/Territory Governments.

2. Why is Competition Policy an Issue Now and Why National?

Over the past decade, there has been a rapid acceleration in the pace with which Australia has become integrated into the international economy. At the same time, the world economy has itself been subject to rapid internal structural change as reflected for example, in the telecommunications and international finance sector revolutions, the rapid emergence and *take-off* of the *tiger economies* of south-east Asia and the new uncertainties arising from the

emergence of trade blocs in Europe and North America. There seems to be general community acceptance of the position that if Australia is to maintain and improve its standard of living, it needs to confront and take-on the challenges arising from such global changes.

One of the key ways of meeting the global challenge is for Australians to produce traded goods and services at least as well as, if not better than, our international competitors - ie, to improve the productivity of our national economy. The Government's microeconomic reform program and allied initiatives (for example, in the areas of industrial relations, training and education and industry policy) are seen as central to the pursuit of national productivity improvement. Throughout the 1980s, the micro-economic reform program tended to focus on individual industry-oriented reforms, for example, deregulation in finance and domestic aviation, waterfront and shipping industry reform and the liberalisation of primary produce marketing and domestic telecommunications.

Since then, the attention of all levels of Australian governments has become more focussed on across-the-board reform particularly in regards to the level of competition within the domestic economy. Government interest in competition reflects a general acceptance in most quarters that free and open competition can be a powerful inducement to economic efficiency and the advancement of consumer welfare; through the market price mechanism, the forces of competition can be powerful instruments for ensuring that the needs of consumers and industry are satisfied in the least costly and most effective manner possible. In turn, such spurs to efficiency can contribute to economic growth and the sustenance of the nation's level of material well-being.

Despite over ninety years of Federation, to date, Australia has not enjoyed a fully-effective 'common market' within its borders; various state-based institutional barriers have inhibited full national integration of economic activity across the Australian States and Territories. But the economic significance of State and Territory borders continues to

diminish rapidly as advances in transport and communications permit even the smallest firms to trade around the nation. This has been recognised by Federal and State Governments in recent years with significant steps already being taken in such areas as the establishment of a national electricity grid, a national rail corporation, uniform road transport regulation, national corporations law and the mutual recognition of product standards and occupational licensing. However, to date, competition policy has remained fragmented between Federal and State jurisdictions.

3. How was Australia's National Competition Policy Developed?

Recognising the importance of nationwide business sector competition as a spur to enhanced productivity and improved living standards, leaders of Federal, State and Territory Governments agreed in 1992 to the development of a **National** competition policy. Subsequently, a Committee of Inquiry chaired by Professor Frederick G Hilmer was set up to undertake an independent Inquiry into NCP. Following extensive consultations and the assessment of numerous public submissions, the Inquiry presented its report to Heads of Governments in August 1993. Subsequently, extensive inter-governmental consultation and Federal financial compensation negotiations undertaken through the Council of Australian Governments (COAG) resulted in the broad scope of the Hilmer proposals being endorsed. The NCP is now being put into effect.

This NCP framework comprises a combination of laws, principles and processes as well as two key institutions. It builds on the foundations of existing competition policy instruments administered through the old Trade Practices Commission and the Federal Prices Surveillance Authority (now merged to form the Australian Competition and Consumer Commission). The main elements of the NCP framework are summarised in the Schedule which follows.

SCHEDULE

The National Competition Framework: Legislative Scope and Institutions

A. LEGISLATIVE ELEMENTS

1. The Competitive Conduct Rules

Major features include:-

- The prohibition of various forms of anti-competitive conduct by businesses such as
 - anti-competitive agreements
 - misuses of market power
 - mergers and acquisitions which would substantially reduce competition.
- The extension of the scope of Australia's Competitive Conduct Rules through a Competition Code which encompasses previously exempted businesses, this being facilitated in part by complementary State and Territory legislation
 - for example, in relation to unincorporated businesses operating solely in intra-State trade (such as some legal firms).
- The removal of the 'shield of the Crown' protection from State and Territory Government Business Enterprises (GBEs)
 - so achieving 'competitive neutrality' by enabling GBEs to compete with private firms without any institutionally based advantages or disadvantages.
 - which elements of Government activity constitute 'business' and which are 'non-business' are identified.
- The specification of procedures for exempting particular types of business activities from the Competitive Conduct Rules
 - the NCP considerably restricts the scope for the Commonwealth and State/Territory Governments to legislate or make regulations which might provide for such exemptions.
- The facilitation of an authorisation process which legalises agreements between competitors to fix prices of goods or to engage in resale price maintenance where these arrangements may be demonstrated to be in the public interest.

2. Third Party Access to Essential Facilities

- The NCP's so-called Access Regime refers to the processes whereby businesses can obtain access to the services of certain essential facilities of national significance which exhibit natural monopoly characteristics such as electricity grids, rail networks or gas pipelines
 - so as to encourage competition in the provision of allied services such as electricity generation or rail transport service supply.
- The main features of the Access Regime are:-
 - the arrangements whereby a particular facility can be 'declared' available for third party access.
 - the negotiation of conditions of access and the use of private arbitration mechanisms
 - the arrangements whereby the owner or operator of an essential facility can obtain certainty about access arrangements prior to any third party seeking such access.

3. The Oversight of Prices

- Under the NCP, the Federal Government's responsibilities for Prices Surveillance and price inquiries as previously performed by the Prices Surveillance Authority are broadened to include a prices monitoring function whereby the responsible Federal Minister may request ongoing monitoring of prices, costs and profits in any industry or business
 - and with qualified scope for the prices oversight processes to be extended to State and Territory GBEs.

B. THE INSTITUTIONS OF NATIONAL COMPETITION POLICY

- At the National level, three main institutions are facilitating the implementation of the NCP:-
 - the Australian Competition and Consumer Commission (ACCC)
 - the National Competition Council (NCC), and
 - the Australian Competition Tribunal (ACT).
- The ACCC was created late in 1995 from a merger of the former Trade Practices Commission and the Prices Surveillance Authority. It is responsible for the enforcement of the competition and consumer protection provisions of the Trade Practices Act and the provisions of the Competition Code.
- The NCC is an entirely new body which is to make recommendations about access declarations and prices oversight of State/Territory GBEs. It may also undertake reviews of competition policy issues in accordance with a work program determined by participating governments.
- The ACT is a renamed Trade Practices Tribunal but with the added responsibility of addressing appeals from decisions in access matters.

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